No. 80-759

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ALBERTO SANCHEZ, et al.,
Petitioners,

v.

TUCSON UNIFIED SCHOOL DISTRICT No. 1, et al; UNITED STATES OF AMERICA; MARIA MENDOZA, et al., ROY and JOSIE FISHER, et al., SIDNEY L. SUTTON and SALLY SUTTON, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL O. ZAVALA
P.O. Box 70
La Placita Village
Tucson, Arizona 85702
(602) 884-7100

VILMA S. MARTINEZ
MORRIS J. BALLER
Counsel of Record
Mexican American Legal Defense
and Educational Fund
28 Geary St., 6th Floor
San Francisco, California 94108
(415) 981-5800

Attorneys for Respondents
Maria Mendoza, et al.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

Page

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE..... 2

1. The District Court's Decision on the Mexican American Class' Claims..... 2

2. Benefits Obtained for the Mexican American Class in the Settlement Agreement..... 5

3. Petitioners had extensive notice and fully participated in all remedial proceedings.. 7

REASONS TO DENY THE WRIT..... 9

A. Petitioners Present No Significant Questions of Law.... 9

B. Petitioners Suffered No Injury From The Omission From Judicial Notice of Explicit Language About School Closures and Dismissal of Non-Assignment Counts..... 11

1. The School Closures..... 12

2. The Non-Assignment Counts..... 14

CONCLUSION..... 15

TABLE OF AUTHORITIES

Page

Case

Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950).....10

Other Authority

Rule 23 (c), (d)(3), F.R.C.P..... 9

Rule 23(e), F.R.C.P.....12

No. 80-759

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ALBERTO SANCHEZ, et al.,

Petitioners,

vs.

TUCSON UNIFIED SCHOOL DISTRICT No. 1, et al.; UNITED STATES OF AMERICA; MARIA MENDOZA, et al.; ROY and JOSIE FISHER, et al.; SIDNEY L. SUTTON and SALLY SUTTON, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents Maria Mendoza, et al., and their class of Mexican American students and parents of Respondent Tucson Unified School District No. 1, submit this brief in opposition to the Petition for a Writ of Certiorari filed by Petitioners Alberto Sanchez, et al.

STATEMENT OF THE CASE

The proceedings below and pertinent facts are, for the most part, accurately set out in the Brief in Opposition filed by Respondent Tucson Unified School District (hereinafter the "School District") and in the opinion of the Court of Appeals.[1] The Mendoza Respondents adopt those statements. We add here several additional points necessary to proper consideration of the questions advanced by Petitioners.

1. The District Court's Decision on the Mexican American Class' Claims.

In its exhaustive and detailed decision on the merits entered June 5, 1978, after full trial, the District Court ruled against the Mexican-American plaintiffs' claims in almost every respect. It found insufficient evidence to support the allegation that the defendant School District had ever operated a dual system which segregated Mexican American students

---

[1]App. 4-16, 623 F.2d 1338, 1341-43.

on the basis of race.[2] Of the nine schools whose present racial composition was found by the Court to be a product of past segregative acts, six reflected a segregated dual black-white system and the District's failure to dismantle that system; in only one cluster of three schools did the Court find actionable discrimination resulting from segregative acts against Mexican Americans.[3] The latter three schools have adjacent attendance zones and the evidence of segregative acts essentially involved manipulation of attendance boundaries among

---

[2]Decision June 5, 1978, p. 211, ¶49. In contrast, the court found that until 1951 defendants had maintained a dual system which segregated black students on the basis of race, and had failed to dismantle that system fully. Decision of June 5, 1978, pp. 41-42, ¶¶1-16, p. 209 ¶13, p. 212-13 ¶21, p. 222 ¶56.

[3]These schools are Manzo, Brichta, and Tully Elementary Schools. Among the other six schools, where defendants' segregative acts were directed against blacks only, are the three--Roosevelt and University Heights Elementary Schools and Spring Junior High School--whose closure sparked Petitioners' objections.

the three schools.[4] The Court's decision therefore afforded no basis for desegregation remedies based on past segregation of Mexican American students anywhere in the School District outside a small, three-school area.

The District Court also heard extensive evidence on claims other than the main student assignment issue, as an adjunct to that issue,[5] and ruled against plaintiffs on those claims involving allegations of faculty hiring discrimination, discriminatory implementation of bilingual education and other special minority-oriented programs, and discrimination in curriculum, materials and discipline.[6] The Court's decision therefore found facts which precluded relief on any of plaintiffs' claims other than segregated student assignments.

---

[4]Decision of June 5, 1978, p. 223 ¶59, pp. 87-88, ¶¶91-95, pp. 125-127 ¶¶8, 11-13.

[5]See Tr. Vol. IV, pp. 489-91.

[6]Decision of June 5, 1978, p. 169 ¶55, p. 170 ¶1, p. 172 ¶¶20-21, p. 167-68 ¶¶45-49, p. 168 ¶50, pp. 168-69 ¶¶52-54.

2. Benefits Obtained for the Mexican American Class in the Settlement Agreement. The Stipulation of Settlement provided substantial benefits for the Mexican American class, at slight cost in litigative opportunities foreclosed. The settlement provided for desegregation of three predominantly Mexican-American schools not included among the nine in which the Court found actionable violations, and therefore not subject to mandatory desegregation except by settlement.[7] The settlement also imposed on defendants a mandatory process of parent and neighborhood consultation with regard to three other schools, each about 90% Mexican American, which defendants had been free to close or otherwise dispose of after the June 5 decision finding no actionable segregation at those schools.[8] Finally, the settlement assures

---

[7]Borton and Holladay Elementary Schools, and Utterback Junior High School.

[8]Davis, Drachman, and Carrillo Elementary Schools. Decision of June 5, 1978, pp. 221-22, ¶¶53, 58, 59. Defendants planned to close some or all of those schools. As a result of the consultation process, all remain open and are the subjects of revitalization efforts.

that non-minority children share, to a substantially equal degree, the transportation and reassignment burdens incident to desegregation.

The Mexican American class also derives benefit from the non-assignment provisions of the decree, including: mandatory provisions of affirmative action employment practices for hiring, placement, and promotion of Mexican American teachers, administrators, and professionals[9]; a uniform non-discriminatory student suspension and expulsion policy[10]; elimination of discriminatory testing instruments[11]; and a pilot reading program experiment sought by some Mexican American parents.[12] While several settlement provisions expressly provide for participation or review by black representatives,

---

[9] App. 134 ¶11.

[10] App. 135 ¶13.

[11] App. 135 ¶14.

[12] App. 137 ¶16.

testimony at the settlement hearing confirmed that the inclusive language of those provisions covers Mexican Americans as well, and that many of the specific remedies first extended to blacks by the settlement were already afforded Mexican Americans by the Title VI Compliance Agreements which remain in effect between the School District and the U.S. Department of Health, Education and Welfare.

In obtaining these benefits of settlement, little was given up that had not already become unattainable. The closure of three minority schools had been proposed by the School District and approved by the Court--as a desegregation remedy, not as a compromise settlement. App. 79-84, 114-116; App. 22-27, 623 F.2d 1345-46, 44-45, 623 F.2d 1350. The chance to litigate the "quality education" counts successfully had vanished with entry of the Court's findings of fact in the June 5 decision. See p. 4, supra.

3. Petitioners had extensive notice and fully participated in all remedial proceedings.

As the District Court noted in its August 14, 1978 Order, there was a "great

amount of local publicity concerning all prior orders and proceedings in this case" (App. 106). In addition to the extensive press coverage of all stages of the case, during June and July 1978 the School District publicly announced and debated its desegregation options, including the disputed closures. The options were discussed at a series of well-attended, fully reported public meetings. By August, in preparation for the Rule 23 settlement hearing, Petitioners had solicited support "door-to-door" (App. 116), at shopping centers, and in other ways that caused widespread actual notice of school closures as well as terms of the proposed settlement. The widespread actual notice received by class members is confirmed by the appearance of some 30 witnesses and 121 petition signatories in the Court's review proceedings (App. 116-18).

The District Court patiently heard all the objecting class members and other concerned members of the public. Throughout the four days of hearings on Petitioners' motion for sub-class certification, the School District's desegregation plan, and the proposed settlement, the majority

of the witnesses were Petitioners' and persons who supported them. Most of their testimony concerned the contested school closing. See App. 77-78, 84, 115-119. While the District Court may not have heard all persons whose support Petitioners might have solicited given more time and more individualized notice, the Court heard every type of argument and evidence that could be made on Petitioners' behalf.

REASONS TO DENY THE WRIT

A. Petitioners Present No Significant Questions of Law.

Petitioners cast their five questions in procedural terms, apparently recognizing that this Court's certiorari jurisdiction is invoked for important questions of law, not to resolve factual disputes. Yet, as procedural issues, the matters raised by Petitioners go to the nuts-and-bolts of judicial supervision and notice of class action settlements. Such detailed matters are properly reserved to the discretion of the district courts, subject of course to overriding principles of due process. Rule 23(c), (d)(3), Fed. R. Civ. P. In the exercise of that discretion, trial judges are encouraged to utilize their

expertise and practicality in administering Rule 23 both flexibly and fairly. Nowhere is the need for flexibility and practicality more urgent than in the post-trial settlement of a complex school desegregation case. Here, the Court of Appeals found that the District Judge had, in every respect, given "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950), and had otherwise properly exercised its Rule 23 discretion. This Court's further review of the mechanics of notice and settlement used in this case would illuminate no significant legal issues.

Petitioners' assertions of procedural issues are merely tactical ploys in their attack on the substance of the Court's desegregation Order of August 11, 1978, and its Order approving the parties' Stipulation on August 31, 1978. Since objectors and other class members in fact had full notice and opportunity to be heard on these matters, Petitioners' procedural arguments

in effect invite this Court to re-examine the Constitutional adequacy of the desegregation order and the fairness of the settlement. We address those unstated issues below--but first we note that nothing about them warrants this Court's review on certiorari.

B. Petitioners Suffered No Injury From The Omission From Judicial Notice of Explicit Language About School Closures and Dismissal of Non-Assignment Counts.

Although the notices ordered by the Court did not in clear terms state that three schools were to be closed and non-assignment counts of the complaint would be dismissed under the proposed settlement, Petitioners and other class members were not prejudiced by this omission. Actual notice of these terms was provided in a timely manner by non-judicial means: press coverage, School District publicity, and the efforts of Petitioners themselves. The District Court had before it, and considered, all possible objections to both the desegregation plan and the later settlement. Petitioners and their supporters had every opportunity to present their

positions and evidence, yet failed to convince the Court. The reason for their lack of success is manifest: both the desegregation order and the court-approved settlement were not merely acceptable, but amply protected and benefitted class members' interests.

1. The School Closures.

The School District's decision to desegregate Roosevelt, University Heights, and Spring (and a number of adjacent schools) by closing the three schools was justified and beyond Respondents' power to prevent.[12] The District Court correctly reviewed the closure decision as a desegregation plan presented by defendants, under the test of whether the means chosen to desegregate were themselves constitutional and effective. App. 80-82; App. 22-27, 623 F.2d at 1345-46. The District Court did not have to review the closures under a Rule 23(e) test of "fairness" or "adequacy" to the class, since they were adopted by remedial order rather than by settlement. Nevertheless, it painstakingly

---

[12]These schools have not been closed for over two years, since September 1978.

reviewed the justifications for closing each school, reciting site deficiencies, roofing problems, inadequate classrooms, dangerous street crossings, and similar factors. App. 87-96. It concluded that the schools' students, as well as the School District, would be well served by closures and reassignments.

In these factual circumstances, the Mendoza plaintiffs had no chance of preventing closure of the three schools. The constitutional mandate to desegregate both them and other nearby schools was served by closure. Plaintiffs did not agree in advance to the closures; they subsequently acquiesced by opting to gain other benefits for the class through settlement rather than pursuing a hopeless appeal from the desegregation plan. Those other benefits include desegregation of several schools not within the Court's June 5 order, protection of other schools from probable closure, and protection of minority interests in allocating the burden of desegregation. See pp. 5-7, supra. Without the settlement, none of these benefits would have been attainable, since the necessary underpinning for remedial actions--the

finding of constitutional violations--was absent, see p. 2, supra. The settlement, therefore, conceded little or nothing, and accomplished much, in benefitting the class with respect to student assignment decisions including school closures.

2. The Non-Assignment Counts.

While plaintiffs had attempted to withhold from adjudication issues other than the principal student assignment claim, much evidence underlying those claims was necessarily adduced by all parties in litigating the main segregation issue. In its June 5 opinion, the District Court entered findings of fact on that evidence which effectively disposed of plaintiffs' claims. See p. 4, supra. At that stage, no viable legal claim on these issues remained to the class. Moreover, the rights and opportunities of Mexican Americans with regard to the "quality education" issues were already safeguarded by Title VI compliance agreements entered into by the School District and HEW as this litigation moved toward trial. Those compliance agreements specifically addressed the linguistic and other needs of the District's Mexican American children.

The settlement agreement approved by the District Court preserved these advantages to class members and assured other benefits, including continued implementation of the same affirmative action employment policies which had greatly accelerated Mexican Americans' hiring and promotion after suit was filed. See p. 6, supra. On these counts, as on student assignment, plaintiffs ceded nothing of significant value in the settlement and obtained substantial benefits for the class.

CONCLUSION

The procedures utilized by the District Court in approving the settlement of this case were proper. The settlement was adequate and fair to members of the class, including Petitioners. The Petition should be denied.

DATED: December 31, 1980

Respectfully submitted,

MICHAEL O. ZAVALA
Tucson, Arizona

VILMA S. MARTINEZ
MORRIS J. BALLER
San Francisco, California